

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

TRANSCRIPT OF RECORD.

Court of Appeals, District of Columbia

OCTOBER TERM, 1901.

No. 1120.

105

DENNIS McCARTHY, APPELLANT,

vs.

JEREMIAH J. QUINN.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED AUGUST 14, 1901.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

OCTOBER TERM, 1901.

No. 1120.

DENNIS McCARTHY, APPELLANT,

vs.

JEREMIAH J. QUINN.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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In the Court of Appeals of the District of Columbia.

DENNIS McCARTHY, Appellant, }
vs. } No. 1120.
JEREMIAH J. QUINN. }

a Supreme Court of the District of Columbia.

JEREMIAH J. QUINN ET AL. }
vs. } No. 15751. In Equity.
DENNIS McCARTHY ET AL. }

UNITED STATES OF AMERICA, } ss :
District of Columbia, }

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Bill to Enforce Mechanics' Lien.*

Filed July 28, 1894.

In the Supreme Court of the District of Columbia.

JEREMIAH J. QUINN and SAMUEL ROSS, the }
Latter Doing Business as Barber & Ross, }
vs. }
DENNIS McCARTHY, JOSIAH C. STODDARD, AD- } Equity. No. 15751,
dison G. Dubois, The Washington National } Docket 37.
Building and Loan Association of Washing- }
ton, D. C. }

To the supreme court of the District of Columbia, holding the special term for equity business:

Your complainants, Jeremiah J. Quinn and Samuel Ross, the latter doing business under the name and style of Barber and Ross, respectfully show unto the court as follows:

1. They are citizens of the United States and residents of the District of Columbia and they bring this suit in their own right. The defendants are all citizens of the United States and residents of the District of Columbia except the defendant The Washington National Building and Loan Association of Washington, D. C., which is a foreign corporation organized under the laws of the State of

Virginia, but having an office and agents and doing business in the District of Columbia.

2 2. Heretofore, to wit, on the 6th day of February, A. D. 1893, the complainant Jeremiah J. Quinn contracted with the defendant McCarthy to construct for him eight small houses in or near Tennallytown, in the District of Columbia, upon the ground hereinafter more particularly described, and to furnish all material and labor necessary to complete the same according to plans furnished said McCarthy by said Quinn, and in consideration thereof said McCarthy agreed to pay said Quinn the sum of \$2,750.00, \$1,000.00 thereof to be paid when the buildings were under roof, and the residue of the contract price when the houses were finished and completed.

A copy of said contract is herewith filed, marked "Complainant's Exhibit No. 1," and is prayed to be read and considered as part hereof.

3. Your complainant Jeremiah J. Quinn further alleges that he fully completed said buildings on the 24th day of October, A. D. 1893, on which day he turned over the keys therefor to the said McCarthy, and he thereby became entitled to receive from the said McCarthy the contract price aforesaid, and in addition thereto the sum of four hundred and fifty dollars additional on account of extra work rendered necessary by a departure on the part of said McCarthy from the plans, and which extra work was done with the knowledge and consent and at the request of said McCarthy, and which was fairly and reasonably worth the said sum of \$450.00.

4. Your complainant Jeremiah J. Quinn further shows to the court that he has received on account of his said contract price and on account of the price of the extra work, as aforesaid, only the sum of \$1,500.00, leaving a balance due him on the construction of said buildings of \$1,700.00.

3 5th. Your complainant Quinn further shows that on the 26th day of October, A. D. 1893, he filed in the clerk's office of the supreme court of the District of Columbia a notice of his intention to hold a mechanic's lien for \$1,700.00, with interest from October 24th, 1893, on the property upon which said buildings were erected, and which is hereinafter now particularly described, and also on the buildings thereon erected.

A copy of the said notice is herewith filed, marked "Complainant's Exhibit No. 2," and prayed to be read and considered a part hereof.

6. After the execution of the contract hereinbefore referred to between the complainant Jeremiah J. Quinn and the defendant Dennis McCarthy, the complainant Samuel Ross, doing business under the firm name of Barber and Ross, at the request of said Quinn, supplied him with lumber and mill-work for use in the construction of said buildings and which entered into the construction thereof, which lumber and mill-work was of the fair and reasonable value of \$399.60, and said lumber was furnished not later than October 1st, 1893, and on the 23rd day of November, A. D. 1893, your complain-

ant Samuel Ross filed in the clerk's office of the District of Columbia a notice of his intention to hold a lien on said buildings and the ground upon which they were erected for said sum of \$399.60, and he files herewith a copy of said notice, and the same is marked "Complainant's Exhibit No. 3," and it is prayed that the same may be read and considered a part hereof.

4 7. The owner of said ground and the buildings thereon is the said defendant, McCarthy, and the work done and materials furnished thereon by the complainant Quinn was done and furnished by virtue of a contract between him and the said McCarthy, and the materials furnished in the erection of said buildings by the complainant Ross were furnished under a contract and agreement with said Jeremiah J. Quinn, the principal contractor with said Dennis McCarthy.

8. Your complainants further aver that work on said buildings was commenced on or about the 1st day of March, A. D. 1893.

9. The real estate hereinbefore referred to is known and designated as and being lots numbered ten (10) and eleven (11), in the subdivision made by Edward P. Burket of parts of the tracts of lands in the county of Washington, District of Columbia, formerly called "Mt. Airy" and "Friendship," as per plat recorded in County Book 8, page 144, of the surveyor's office of the District of Columbia.

10. The defendant Dennis McCarthy, being seized in fee-simple of said real estate by deed dated May 15, 1893, and recorded May 25, 1893, in Liber No. 1812, folio 168, of the land records of the District of Columbia, conveyed the same to the defendants Josiah C. Stoddard and Addison G. Dubois in fee-simple, in trust, to secure the defendant The Washington National Building and Loan Association of Washington, D. C., a bond of \$10,000 securing certain advances then made or thereafter to be made to the said McCarthy; but your complainants do not know how much money has been advanced by said association to the said McCarthy or the time
5 at which said advances were made, and they ask that said association discover fully under oath what amount of money has been advanced by it to the said McCarthy and times when said money was advanced.

11. Your complainants further show that, so far as they are aware and so far as the public records disclose, no person, other than the complainants and the defendants have any interest in the said real estate or the subject-matter of this suit.

The premises considered, your complainants pray that the above-named defendants, Dennis McCarthy, Josiah C. Stoddard, Addison G. Dubois, and The Washington National Building and Loan Association of Washington, D. C., be served with process, be made parties defendant hereto, and be required to answer the exigencies of this bill.

That the real estate hereinafter described may be sold for the purpose of satisfying the liens of the complainants hereinbefore referred to, and that a trustee or trustees be appointed for the purpose.

And that the complainants may have such other and further relief in the premises as may be necessary or proper.

HAMILTON & COLBERT,
Solicitors for Complainants.

The defendants to this bill are Dennis McCarthy, Josiah C. Stoddard, Addison G. Du Bois, The Washington National Building and Loan Association of Washington, D. C.

6

Answer of Dennis McCarthy.

Filed August 20, 1894.

In the Supreme Court of the District of Columbia.

JEREMIAH J. QUINN and SAMUEL ROSS, the Latter Doing Business as "Barber & Ross,"	}	Equity. No. 15751.
vs.		
DENNIS MCCARTHY, JOSIAH C. STODDARD, Addison G. Dubois, The Washington Na- tional Building and Loan Association of Washington, D. C.	}	

The separate answer of Dennis McCarthy, the above-named defendant, to the bill of complaint of the above-named complainants, respectfully shows to the court as follows:

1. He admits the residence and citizenship of the complainants, and also on information and belief admits the residence and citizenship of the other defendants. He admits that he is a resident of the District of Columbia.

2. He admits that on or about the 6th day of February, 7 A. D. 1893, the complainant Jeremiah J. Quinn agreed to construct for him eight houses at Tennallytown, D. C., and agreed to furnish all material and labor necessary for the construction of the same according to the plans furnished him by the said complainants, but denies that the said Quinn constructed the said houses according to said plans and specifications or furnished all material and labor for the same and completed the same.

Further answering the 2nd paragraph, the said defendant says that he did promise to pay the said Quinn \$2,750.00 for eight houses constructed according to the said plans and specifications, but denies that his promise was ever binding or valid in law, for the reason that the said Quinn utterly failed to keep his contract and at times almost abandoned the work; and the said defendant says that he was on the said 6th day of February willing to perform every covenant of his contract, and on the said 24th day of October, 1893, and even now would have been willing to pay the said sum if such payment ought under the circumstances to have been made. The said defendant says that he paid the sum of \$1,000, as stipulated, when the houses were under roof, although he saw how the complainant Quinn was violating the terms of his agreement.

3, 4. The said defendant denies that the said complainant, Jeremiah J. Quinn, fully completed the said houses on the 24th day of October, 1893, or any other day, and denies that the said Quinn was on that day entitled to receive from him any sum of money whatever, and denies that the said Quinn with his knowledge and consent did for him any work additional to that agreed upon or did any extra work whatever, and denies that he is entitled to receive on that account the sum of four hundred and fifty dollars (\$450) or any sum whatever; but the said defendant, further answering, says that the said complainant, from the foundations of the said houses to the roof- of the same, performed his work in a negligent, careless, and unskilful manner; that he did not construct the foundations of the said houses or furnish them with such timber as were specified between them; that the said defendant, after having made the payment of \$1,000 aforesaid and having discovered the intention of the complainant to defraud and deceive him in the execution of the work, was obliged to employ an able mechanic, at a great loss and expense to himself, to insure the said work, and especially to see that the houses were so constructed as to be habitable; that he was obliged to undo part of the work and replace it as stated in the contract, in order to render the buildings safe; that the said defendant has overpaid the said Quinn in paying, first, the sum of \$1,000 and then \$500.00, making in all \$1,500, and on the day when the houses were declared by the said complainant to be completed so notified him and informed him that he proposed to deduct from the said sum of \$2,750.00 the sum of \$1,500.00, which he had unfortunately paid the said Quinn, the amount expended by him to the carpenter aforesaid to protect the work, the cost of rebuilding according to specification, the amount required to complete the work, and the damages occasioned by the delay, and that he owed Quinn nothing and intended to pay him nothing more, but proposed to sue him for breach of his contract to compensate for the damages sustained by him. He admits that after
9 this John Quinn, one of the bondsmen as hereafter specified, left with him the keys of the said houses, but denies that he ever accepted the same as a performance by the said Quinn of the contract, and took the keys under the circumstances above related, and reserving to himself the right to set off the expense incurred and recoup the damages sustained. The said defendant denies that he on the 24th day of October owed the said complainant \$1,700.00 or any sum whatever.

5. The said defendant admits the averments of this paragraph on information and belief.

6. The said defendant to so much of this paragraph as avers that the said complainant, Samuel Ross, trading as Barber and Ross, furnished timber and mill-work for said buildings prior to October 1st, 1893, says that he has no personal knowledge of the same and can neither admit nor deny it, but, if material, requires strict proof thereof. On information and belief he admits the allegation of this paragraph in regard to the filing of the notice of the intention of the said Samuel Ross to hold a lien on said buildings.

But, further answering, the said defendant says that he had received no intimation from any source that the said complainant had furnished any material for the construction of the said buildings prior to the said 24th day of October, 1894, when the said complainant, Quinn, declared the said houses completed and the said defendant notified him that there was nothing in his hands further due him, as he had already been overpaid, and that some time afterwards, to wit, on or about the 23rd day of November, he was notified of the claim of the said Samuel Ross.

10 7. The said defendant says that he is the owner of an equitable interest in the said property; that it is subject to the trust dated May 15th, 1893, to secure the defendant The Washington National Building and Loan Association of Washington, D. C., in the sum of \$3,500.00, of which but about \$2,500.00 remains unpaid, and in answer to the allegation of this paragraph, in which it is averred that materials were furnished under a contract with the said Jeremiah J. Quinn, says that he has no personal knowledge of the same, and therefore can neither admit nor deny it.

8. The said defendant is unable to either admit or deny the averments of this paragraph, but, if material, calls for strict proof of the same.

9. The said defendant admits the averments of this paragraph.

10. The said defendant, in answer to this paragraph, admits that he executed the deed of trust as stated herein, but, further answering, says that a bond for the sum of \$5,000.00 was executed by the said defendant and the said complainant, Quinn, and one John Quinn to protect the buildings aforesaid from mechanics' liens, which said bond is in full force and virtue, and a copy of which is hereto annexed, marked Defendants' Exhibit No. 1, and prayed to be read as a part hereof.

Further answering this paragraph, the said defendant says that the Washington National Building and Loan Association advanced on his account the sum of \$3,500.00, of which \$980.00 was
11 paid to complete title to the said real estate, and \$1,500.00 paid to the complainant Quinn, as hereinbefore specified.

11. The said defendant admits the allegation of this paragraph.

DENNIS MCCARTHY.

EDWARD L. GIES,

Solicitor for Defendant McCarthy.

I do solemnly swear that I have read the foregoing answer by me subscribed, and that I know the contents thereof, and that the matters and things therein stated on my personal knowledge are true, and those stated upon information and belief I believe to be true.

DENNIS MCCARTHY.

Subscribed and sworn to before me this 20th day of August, A. D. 1894.

J. R. YOUNG, *Clerk*,
By F. W. SMITH, *Ass't Clerk*.

12

EXHIBIT No. 1.

Filed August 20, 1894.

Know all men by these presents, that we, Dennis McCarthy, Jeremiah J. Quinn and John Quinn, are held and firmly bound unto the Washington National Building and Loan Association of the City of Washington, District of Columbia, in the full and just sum of five thousand dollars in current money of the United States of America, to be paid to the said association, its successors or assigns, to which payment well and truly to be made and done, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 18th day of May in the year eighteen hundred and ninety-three.

Whereas the said Dennis McCarthy has negotiated and received a loan from the Washington National Building and Loan Association of the sum of thirty-five hundred (3,500) dollars upon the security of the property hereinafter described, as will more fully appear by his bond and deed of trust of this date therefore and thereon, in consideration whereof, and in order to secure said loan of thirty-five hundred (3,500) dollars said Dennis McCarthy, Jeremiah J. Quinn and John Quinn have undertaken and agreed and do hereby undertake and agree to insure or guarantee said Washington National Building and Loan Association against loss by reason of mechanics' or builders' liens or claims for work, labor, materials or otherwise,

13 under the act of Congress, approved July 2, 1884, or under any other act or law, being made or asserted against certain pieces or parcels of land situate, lying and being in Tennallytown in the District of Columbia, and known and described as follows, to wit: Lots ten and eleven (10 & 11) block three (3) in a subdivision made by Edward P. Burket, of part of tracts, originally known as "Mt. Airy" and "Friendship," as being as per plat recorded in Liber County 8, folio 144 of the records of the surveyor's office of the District of Columbia, and the buildings or improvements thereon erected or to be erected.

And whereas the said Dennis McCarthy and Jeremiah J. Quinn and John Quinn have agreed, and do hereby agree, to indemnify and save harmless the said Washington National Building and Loan Association against any and all loss, damage, costs and expenses, which it may hereafter suffer, incur, be put to, pay or lay out by reason of any such claims or liens, and have further agreed, and do hereby agree, to pay and discharge forthwith each and every such claims, or claims, lien or liens, which shall be filed or asserted against the hereinbefore-mentioned real estate, and the buildings or improvements erected, or to be erected thereon, or any part thereof.

Now the condition of this obligation is such that, if the said Dennis McCarthy and Jeremiah J. Quinn and John Quinn, their heirs, executors, administrators or assigns shall perform their aforesaid

agreement, and shall well and sufficiently save and keep harmless and indemnified the said Washington National Building and Loan Association and its successors from all costs, loss and damage
 14 it may be put to, suffer or incur, by reason of any mechanics' lien or liens, that may be made or asserted against the said real estate and the buildings and improvements thereon, or any part thereof, then this obligation to be null and void, otherwise to remain in full force and effect and virtue in law.

(S'd)	DENNIS McCARTHY.	[SEAL.]
(S'd)	JEREMIAH J. QUINN.	[SEAL.]
(S'd)	JOHN QUINN.	[SEAL.]

Signed, sealed and delivered in the presence of—

(S'd) THOS. H. ANDERSON.

(S'd) HENRY HALSEY.

15

Final Decree.

Filed May 27, 1895.

In the Supreme Court of the District of Columbia.

JEREMIAH J. QUINN ET AL.	} Equity. No. 15751, Doc. 37.
vs.	
DENNIS McCARTHY ET AL.	

This cause came on to be heard upon the pleadings and proofs, and having been argued by counsel and considered by the court, it is this twenty-seventh day of May, A. D. 1895, adjudged, ordered, and decreed that the complainant Jeremiah J. Quinn is entitled to and he is hereby declared to have a lien upon the real estate described in the bill of complaint filed in the above-entitled cause for the sum of \$1,250.00, with interest thereon from the 24th day of October, A. D. 1893, and for the purpose of satisfying said lien it is hereby adjudged, ordered, and decreed that said real estate be sold, and that Michael J. Colbert and Edward L. Gies be, and they are hereby, appointed trustees to make said sale. The course and manner of their proceedings shall be as follows: They shall first file in this cause their several bonds to the United States in the penal sum of three thousand dollars each, conditioned for the faithful performance of their duties as such trustees. They shall next proceed to sell said real estate, divested of the title of all the parties to this cause, at public auction, in front of the premises, to the highest bidder therefor, and as soon after said sale as may be practicable they shall report their action in the premises to the court. It is further ad-
 16 judged, ordered, and decreed that in the distribution of the proceeds of said sale the said trustees shall first pay the costs of this suit and shall next pay off any balance which may be found to be due to the defendant The Washington National Building and Loan Association on account of the indebtedness secured by the deed of trust referred to in the proceedings had in this cause,

and they shall next pay to said Jeremiah J. Quinn the said sum of \$1,250.00, with interest as aforesaid, less the sum of \$399.60, with interest from the first day of October, 1893, which shall be paid to the complainant Samuel Ross, and the balance of said proceeds of sale, if any, shall be paid to the defendant McCarthy. In the event, however, that said real estate shall not sell for a sum sufficient to pay off and satisfy in full to the said Jeremiah J. Quinn the said sum of \$1,250.00, with interest as aforesaid, after the payment of costs and the sum due to the said Washington National Building and Loan Association as aforesaid, then and in that event it is further adjudged, ordered, and decreed that said Quinn shall recover personally against said Dennis McCarthy the said sum of \$1,250.00, with interest as aforesaid, or so much thereof as shall not have been paid and satisfied by the sale of said real estate, and have execution therefor as at law.

W. S. COX, J.

17

Order Finally Ratifying Sale.

Filed August 8, 1895.

In the Supreme Court of the District of Columbia.

JEREMIAH J. QUINN ET AL.	} No. 15751. Equity.
vs.	
DENNIS MCCARTHY ET AL.	

No objection having been shown to the court, it is this 8th day of August, A. D. 1895, ordered that the sale made by the trustees of the real estate described in these proceedings and heretofore reported to the court be, and the same is hereby, finally ratified and confirmed. It is further ordered that this cause be, and it is hereby, referred to the auditor of this court for the purpose of stating the account of the trustees and the proper distribution of the fund in their hands. The said auditor shall ascertain and report what balance, if any, is due by the defendant Dennis McCarthy to the defendant The Washington National Building and Loan Association on account of the debt secured by the deed of trust referred to in the proceedings had in this cause.

CHAS. C. COLE,
Asso. Justice.

18

Filed November 4, 1895.

SCHEDULE A.

Account of Michael J. Colbert and Edward L. Gies, Trustees.

DR.

To proceeds of sale of lots 10 and 11, in Burket's subdivision of parts of "Mt. Airy" and "Friendship," to the Washington National Building and Loan Association for \$3,600.00.....	\$3,600.00
--	------------

CR.	
By costs of suit.....	\$207.00
“ Evening Star, notice of sale.....	34.41
“ court record, ditto	1.00
“ Law Reporter, order nisi.....	8.55
“ taxes paid by trustees.....	50.80
“ trustees’ commissions.....	\$138.00
Less to auctioneer.....	10.00
	<hr/>
	128.00
“ C. G. Sloan & Co., auctioneers.....	25.00
“ auditor’s fees.....	45.00
Balance to Schedule B.....	3,100.24
	<hr/>
	\$3,600.00

JAS. G. PAYNE, Auditor.

SCHEDULE B.

Distribution.

Balance from Schedule A.....	\$3,100.24
To the Washington National Building and Loan Association.	
Balance due per account stated in Schedule	
C.....	3,189.35
Applied to this.....	3,100.24
	<hr/>
	89.11

JAS. G. PAYNE, Auditor.

Order Ratifying Auditor’s Report, &c.

Filed November 19, 1895.

In the Supreme Court of the District of Columbia.

JER-MIAH J. QUINN ET AL. }
vs. } Equity. No. 15751.
DENNIS MCCARTHY ET AL. }

It appearing to the court that the sale made by the trustees in this cause to the defendant The Washington National Building and Loan Association of the real estate described in these proceedings has been finally ratified and confirmed, it is by the court, this 19th day of November, adjudged, ordered, and decreed that said trustees convey said real estate to said association in fee-simple by a proper deed of conveyance, divested of the title of all the parties to this cause; and it further appearing to the court that said association, the purchaser of said real estate, as aforesaid, has paid to said trustees the sum of \$1,200.00 in cash, being the one-third cash payment

required by the decree for sale; and it further appearing by the report of the auditor, herein filed on the 4th day of November, A. D. 1895, that said association is entitled to all said proceeds of sale after the payment of the costs of this suit, to wit, \$499.76, and that all the parties hereto are willing that said auditor's report be confirmed, it is further ordered that said auditor's report be confirmed, and that said trustees, after the payment of the costs aforesaid, pay over to said association or to its solicitors of record all the fund
 21 in their hands. It is further ordered that said Washington National Building and Loan Association recover personally from the defendant Dennis McCarthy the sum of eighty-nine ¹⁰⁰ dollars, being the balance due from said McCarthy to the said association over and above the proceeds of the sale of said real estate, and that said association have execution therefor as at law.

E. F. BINGHAM, C. J.

Nov. 16, 1895.

We consent.

M. J. COLBERT,

For Himself, and

A. B. DUVALL,

Sol'rs for Complainants.

EDWARD L. GIES,

Sol'r for Defendant McCarthy.

T. H. ANDERSON,

Sol'r for Other Defendants.

22

Petition to Execute and Reverse Decree.

Filed April 16, 1901.

In the Supreme Court of the District of Columbia, Holding a Special Term for Equity Business.

JEREMIAH J. QUINN ET AL. }

vs.

DENNIS MCCARTHY ET AL. }

Equity. No. 15751, Docket No. 37.

The petition of the above-named complainant, Jeremiah J. Quinn, respectfully represents to the court as follows:

1. In pursuance of the hearing heretofore had in the above-entitled cause upon the original bill, answers, pleadings, and testimony filed therein, this honorable court on the 27th day of May, A. D. 1895, passed a decree in said cause declaring the complainant to have a lien for the sum of one thousand two hundred and fifty dollars (\$1,250.00), with interest thereon from the 24th day of October, 1893, upon certain real estate described in said original bill of complaint, and appointed trustees in and by said decree to sell said real estate at public auction, and out of the proceeds from said sale it was directed that, in addition to paying the costs of the suit and whatever balance might be found due to the Washington National

Building and Loan Association, they should next pay to complainant the sum of one thousand two hundred and fifty dollars (\$1,250.00), with interest as aforesaid, less the sum of three hundred and ninety-nine dollars and sixty cents (\$399.60), with interest from

23 the first day of October, 1893, which was directed to be paid to one Samuel Ross; and it was further provided that should said real estate not sell for a sum sufficient to satisfy in full the claim of the complainant Jeremiah J. Quinn, with interest as aforesaid, the latter should have the right to recover personally against the said Dennis McCarthy the said sum of one thousand two hundred and fifty dollars (\$1,250.00), with interest as aforesaid, or so much thereof as might not have been satisfied and paid by the sale of said real estate, and that for said balance the said Jeremiah J. Quinn should be entitled to execution as matter of law, as will appear, reference being had to said original decree filed herein upon said 27th day of May, 1895.

2. In pursuance of the terms and authority vested in them by said decree, the trustees mentioned therein, viz., Michael J. Colbert and Edward L. Gies, proceeded to and did sell said property and subsequently had their account stated by the auditor of this court and confirmed by the court, as will appear, reference being had to said account heretofore filed in this cause; that in and by said account it would appear that after the payment of the costs and expenses of said sale and the balance upon said trusts not only did nothing remain for distribution to the complainant Jeremiah J. Quinn, but that as a matter of fact the sum of about eighty-nine dollars and eleven cents (\$89.11) still remained due to said building association; that your petitioner has therefore received nothing by reason of said sale or under said decree.

24 3. Petitioner further states that on or about the 22nd day of October, A. D. 1900, the defendant Dennis McCarthy received from one William L. Hickey and others, heirs of Lawrence Hickey, deceased, a deed of conveyance in fee of piece or parcel of land situate, lying, and being in the District of Columbia, known and distinguished as lot twelve (12), in block seventeen (17); in Howard University's subdivision of a farm formerly owned by John A. Smith and now known as Effingham, as the same is recorded in plat in Liber District Number One (1), folio- 76½ and 77, said property being, petitioner is informed and believes, of the value of at least four thousand dollars (\$4,000.00), as will appear, reference being had to said deed recorded in Liber 2535, at folio 185, one of the land records of the District of Columbia.

4. Petitioner further says that inasmuch as said decree has never been satisfied and the same is a personal decree against the defendant Dennis McCarthy and a lien against all property of whatever description he may subsequently have, become possessed of, or in anywise entitled to, he is advised and believes, and therefore submits, that he is entitled to have said decree enforced against the property herein described in equity, the same not being enforceable by writ of *fieri facias*, and to have a trustee or trustees appointed to

make sale thereof and distribute the same under said decree and in accordance with the orders of this court and the rights of petitioner, or to have an equitable fiat entered in said decree and execution thereon as at law.

Wherefore, the premises considered, petitioner says:

1. That a rule to show cause may be issued out of this honorable court, directed against the defendant Dennis McCarthy, requiring him to show cause, if any he has, by a day certain to be therein named, why the relief prayed for in this petition may not be granted or why execution should not issue on the decree heretofore passed.

2. That this honorable court may appoint some proper person or persons as a trustee or trustees of the property herein described, with directions to sell the same for the purpose of satisfying the terms of said decree and of petitioner's rights thereunder and of distributing the proceeds among the parties who may be entitled thereto under the direction of this court, or may enter a new decree in the nature of a fiat in a judgment at law and award execution thereon, and for such other and further relief as the nature of this petition may require and to the court may seem proper.

JEREMIAH J. QUINN.

LAMBERT & BAKER,
Attorneys for Petitioner.

DISTRICT OF COLUMBIA, ss:

I, Jeremiah J. Quinn, being first duly sworn, on oath depose and say that I am the petitioner named in the foregoing petition by me subscribed and know the contents thereof; that the matters and things therein stated of my own personal knowledge are true, and those stated upon information and belief I believe to be true.

JEREMIAH J. QUINN.

26 Subscribed and sworn to before me this 13th day of April,
A. D. 1901.

[SEAL.]

RUTLEDGE WILLSON,
Notary Public, D. C.

Rule to Show Cause.

Filed April 16, 1901.

In the Supreme Court of the District of Columbia, Holding a Special
Term for Equity Business.

JEREMIAH J. QUINN ET AL.	}	In Equity. No. 15751, Doc. 37.
vs.		
DENNIS MCCARTHY ET AL.		

Upon consideration of the petition filed herein by the complainant Jeremiah J. Quinn, asking that the decree heretofore filed herein be enforced against property described in said petition and trustees

appointed to sell said property and improvements to satisfy the claim of said complainant, or that execution be awarded on said decree, it is this 16th day of April, A. D. 1901, ordered that the defendant, Dennis McCarthy be, and he hereby is, required to show cause, if any he have, on the 30th day of April, A. D. 1901, why the relief prayed for in and by said petition should not be granted; provided a copy of this rule be served upon said defendant on or before the 20th day of April, A. D. 1901.

By the court:

A. C. BRADLEY, *Justice*.

27

Marshal's Return.

Served copy of within order on defendant Dennis McCarthy personally April 16, 1901.

AULICK PALMER, *Marshal*.

28

Answer of Dennis McCarthy.

Filed May 21, 1901.

In the Supreme Court of the District of Columbia, Holding an Equity Court for said District.

JEREMIAH J. QUINN ET AL.	}	Equity. No. 15751.
vs.		
DENNIS MCCARTHY ET AL.		

For answer to the petition in the above cause, filed on the 16th day of April, 1901, or to so much thereof as this respondent is advised that it is material so to answer, answering, he says:

1. In answer to the first paragraph of said petition, this respondent says that it is true, as he is now informed, that there appears of record in this cause a personal decree as in this paragraph of the petition set forth, but that he is advised as matter of law, and being so advised he avers, that the court passing said decree was without jurisdiction so to do, it appearing by an inspection of the proceedings therein that said part of said decree awarding a personal judgment against him was passed without due process of law, and by the granting thereof in said proceedings he was deprived of his constitutional right of trial by jury.

2. And, further answering said petition, this respondent says that at the time the contract alleged to have been entered into by him is claimed to have been made, and the bill filed in this cause to enforce the alleged rights of complainant thereunder, and during the
 29 entire pendency of said suit, and until and after the final decree was rendered herein this respondent was mentally incapable of executing a valid deed or contract, and was utterly incapable because of said defective mental condition of employing counsel in his own behalf, and it was legally incompetent for counsel to so

appear for him, to defend said cause, and this respondent had no knowledge of the nature or import of said suit.

This respondent further says that he did not know of the signing of said final decree until the rule to show cause which he now answers was served upon him ; that the mental impairment of this respondent was of such degree that he was *non compos mentis* during the entire time of the pendency of said suit, at the time of the making of the said alleged contract, upon which said decree was based, as well as at the time of the rendering of the said final decree in this cause, and this respondent further says that because of and in recognition of the fact that he was an irresponsible person and in an irresponsible mental condition the money with which the property sought in these proceedings to be attached under this rule to show cause was purchased was by him given to one Lawrence Hickey, now deceased, for the purpose of protecting this respondent and his said money and property while he continued in such condition and before the filing of the original bill in this cause ; that said property herein attached was bought by said Lawrence Hickey, with said fund, and title taken in his name, and after his recent demise the heirs-at-law of said Hickey conveyed said property to this respondent, he having sufficiently recovered his mental condition as to be able to care for his own interests.

30 Further answering, this respondent says that the complainant Jeremiah J. Quinn, at the time of the making of said alleged contract and during the pendency of said suit, as well as at the time of the passing of said final decree herein, was well aware of respondent's impaired mental condition, and, because of said fact and the respondent's condition, he is advised, and so avers, that the court was without jurisdiction to pass said final decree against this respondent, and the proceedings in said cause are irregular and void.

And now, having fully answered, this respondent prays that a commission may issue or reference be had to an examiner of this court or issues framed to determine the truth of the averments herein alleged, and that said rule herein issued against him be quashed and the petition dismissed ; and he will ever pray.

DENNIS MCCARTHY, *Respondent*.

MASON N. RICHARDSON,
HUFTY & HUFTY,
Solicitors.

DISTRICT OF COLUMBIA, *To wit :*

I, Dennis McCarthy, on oath say I have read the foregoing answer by me subscribed and know the contents thereof, and that the matters therein stated as of my own knowledge are true, and that the matters therein stated on information and belief I believe to be true.

DENNIS MCCARTHY.

Subscribed and sworn to before me this 21st day of May, 1901.

J. R. YOUNG, *Clerk*,
By R. J. MEIGS, JR., *Ass't Cl'k*.

31

Decree, Appeal, &c.

Filed — — —, — — —.

In the Supreme Court of the District of Columbia.

JEREMIAH J. QUINN ET AL.	} In Equity. No. 15751.
vs.	
DENNIS MCCARTHY ET AL.	

This cause coming on to be heard upon the petition filed by Jeremiah J. Quinn on the 16th day of April, A. D. 1901, the rule to show cause issued thereon, and the answer of Dennis McCarthy, filed on the 21st day of May, A. D. 1901, and it appearing to the court that the petitioner is entitled to have execution awarded on the decree of May 27th, A. D. 1893, for the full amount therein decreed to him (no part thereof being paid), and that no sufficient reason why said execution should not be awarded is shown by said answer of said Dennis McCarthy, it is by the court, this 31st day of May, A. D. 1901, adjudged, ordered, and decreed that said complainant, Jeremiah J. Quinn, have execution of said decree for the sum of one thousand two hundred fifty dollars (\$1,250), with interest from the 24th day of October, A. D. 1893, together with the costs of this proceeding, said execution to issue on said decree as at law.

A. C. BRADLEY.

From this decree defendant Dennis McCarthy appeals to the Court of Appeals, and the court fixes the bond at one thousand dollars (\$1,000.00).

32

Memorandum.

June 27, 1901.—Appeal bond filed.

Order for Transcript.

Filed July 22, 1901.

In the Supreme Court of the District of Columbia.

JEREMIAH J. QUINN ET AL., Complainants,	} Equity. No. 15751.
vs.	
DENNIS MCCARTHY ET AL., Defendants.	

The clerk will please prepare the following record for appeal of above-entitled cause to the Court of Appeals, viz:

Original bill,	filed July 28, 1894.
Answer of Dennis McCarthy,	" Aug. 20, 1894.
Decree,	" May 27, 1895.
Order ratifying sale, &c.,	" Aug. 8, 1895.
Schedules A & B of auditor's report,	" Nov. 4, 1895.
Final decree, &c.,	" " 19, 1895.

Petition of Quinn,
Rule to show cause,
Answer of McCarthy,
Decree passed,

“ Ap’l 16, 1901.
 “ “ “ “
 “ May 21, “
 “ May “ “

MASON N. RICHARDSON,
HUFTY & HUFTY,
Attorneys for Appellant McCarthy.

33 *Order Extending Time to File Transcript.*

Filed July 30, 1901.

In the Supreme Court of the District of Columbia.

JEREMIAH J. QUINN ET AL., Complainant,
vs.
DENNIS MCCARTHY ET AL., Defendants. } Equity. No. 15751.

The time for filing the transcript of record in the above-entitled cause for the purpose of appeal thereof to the Court of Appeals is hereby extended to August 15th, 1901.

A. C. BRADLEY, *Justice.*

WILTON J. LAMBERT,
Solicitor for Complainant.

34 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, } ss :
District of Columbia,

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 32, inclusive, to be a true and correct transcript of the record, as per directions of counsel herein filed, copy of which is made part of this record, in cause No. 15751, equity, wherein Jeremiah J. Quinn *et al.* are complainants and Dennis McCarthy *et al.* are defendants, as the same remains upon the files and of record in said court.

In testimony whereof I hereunto subscribe
my name and affix the seal of said court, at
the city of Washington, this 29th day of July,
A. D. 1901.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1120. Dennis McCarthy, appellant, *vs.* Jeremiah J. Quinn. Court of Appeals, District of Columbia. Filed Aug. 14, 1901. Robert Willett, clerk.

NOV 6 - 1901

Robert Wilby
CLERK.

IN THE
Court of Appeals, District of Columbia.

OCTOBER TERM, 1901.

No. 1120.

DENNIS McCARTHY, APPELLANT,

vs.

JEREMIAH J. QUINN, APPELLEE.

WILTON J. LAMBERT,

D. W. BAKER,

Solicitors for Appellee.

IN THE
Court of Appeals, District of Columbia.

OCTOBER TERM, 1901.

No. 1120.

DENNIS McCARTHY, APPELLANT,

vs.

JEREMIAH J. QUINN, APPELLEE.

STATEMENT OF FACTS.

On July 28, 1894, Jeremiah J. Quinn and Samuel Ross filed a bill in the supreme court of the District of Columbia against Dennis McCarthy and others, for the purpose of enforcing a mechanic's lien against certain property belonging to Dennis McCarthy; said property was subject to a trust made to the Washington National Building and Loan Association, which was also a defendant to the bill, as well as the trustees under the trust. The bill recited the contract price and the lien filed by Jeremiah J. Quinn for the full amount of the balance due on the contract price as well as a certain amount claimed for extra work done with the knowledge and consent and at the request of McCarthy. The bill also showed that certain work was done on the

property by Samuel Ross, the complainant, and that he had filed a lien claiming a certain sum of money ; the amount claimed by him was also claimed in the lien of Jeremiah J. Quinn. To this bill the defendant, Dennis McCarthy, filed a separate answer by his attorney, in which he denied that the houses were properly completed according to the contract. He admitted the existence of the trust, and as to the allegations of the bill, they were not denied or admitted ; the defendant called for strict proof. When the case came on to be heard upon the pleadings and proofs and arguments the court, on May 27, 1895, " adjudged, ordered and decreed that the complainant, Jeremiah J. Quinn, is entitled to and he is hereby declared to have a lien upon the real estate described in the bill of complaint filed in the above-entitled cause, for the sum of twelve hundred fifty dollars (\$1,250), with interest thereon from the 24th day of October, A. D. 1893 ;" and then the decree ordered that for the purposes of satisfying the lien the real estate should be sold, and that Michael J. Colbert, who was the solicitor for the complainant, and Edward L. Gies, who was the solicitor for the defendant McCarthy, be appointed trustees to make the sale ; and then that out of the proceeds of the sale they should first pay off the loan with interest, and they should next pay to the complainant, Jeremiah J. Quinn, the sum of twelve hundred fifty dollars (\$1,250), with interest as aforesaid, less the sum of three hundred ninety-nine dollars and sixty cents (\$399.60), with interest, which shall be paid to the complainant, Samuel Ross, and that the balance of the proceeds of sale, if any, shall be paid to the defendant, McCarthy. Then, " In event, however, that said real estate shall not sell for a sum sufficient to pay off and satisfy in full to the complainant, Jeremiah J. Quinn, the said sum of twelve hundred fifty dollars (\$1,250), with interest as aforesaid, after the payment of costs and the sum due to the said Washington National Building and Loan Association as aforesaid, then and in that event, *it is further adjudged, ordered and de-*

creed that the said Quinn shall recover personally against said Dennis McCarthy the sum of twelve hundred fifty dollars (\$1,250) with interest as aforesaid, or so much thereof as shall not have been paid and satisfied by the sale of said real estate, and have execution therefor as at law."

On August 8, 1895, the case was referred to the auditor to state the trustees' account, and on November 4, 1895, the auditor filed his report, and on November 19, 1895, the report of the auditor was confirmed. In the confirmation of the report it appears that there was not sufficient to pay the trust on the property, and a deficiency judgment was given in favor of the Washington National Building and Loan Association for the sum of eighty-nine dollars, being the balance due to the association over and above the proceeds of sale of said real estate, and the said association was given a right to have execution as at law.

The case remained in this status until April 16, 1901, when Jeremiah J. Quinn filed a petition, in the nature of a petition to make the decree of May 27, 1895, executionable. In his petition he alleges the existence of the decree, giving him the lien on the property for the sum of twelve hundred and fifty dollars (\$1,250), and his right to execution at law for that amount, or for any balance that might be due to him after the sale of the property. He sets up that the property was sold and did not bring sufficient to satisfy the trust, and that thereafter the defendant McCarthy became possessed of certain property in the District of Columbia, and was at the time of the filing of the petition owner of certain property in the District of Columbia. The petitioner then averred that said decree never having been satisfied, he was entitled by virtue of his personal decree to a lien on all of the property belonging to Dennis McCarthy, and that the same not being enforceable by writ of *fiery facias*, he had a right to either have trustees appointed to make sale of the property mentioned in the petition *or to have an equitable fiat entered in said decree and ex-*

ecution thereon as at law. He then prayed for a rule to show cause why the property mentioned in the petition should not be sold to satisfy his lien, *or why execution should not issue on the decree heretofore passed*, and that if the court did not appoint trustees to sell the property, *that a new decree might be entered in the nature of a fiat on the judgment at law, and that execution be awarded to him.* A rule to show cause was issued and served on the defendant, Dennis McCarthy, on April 16, 1901.

On May 21, 1901, the said McCarthy filed his answer to the petition. By his answer he denied the jurisdiction of the court to award a personal decree, and then set up the fact that at the time the contract was made, as well as at the time that the decree was entered, he was *non compos mentis* and not capable of protecting his rights.

The case came on to be heard upon the petition filed by Quinn and the answer of Dennis McCarthy, and the court decreed that the petitioner, Jeremiah J. Quinn, was entitled to have execution awarded on the decree of May 27, 1895, for the amount therein decreed to him, no sufficient cause having been shown why execution should not be awarded, and the court thereupon *adjudged, ordered, and decreed that said complainant have execution of his said decree for the sum of twelve hundred and fifty dollars (\$1,250), with interest from the 24th day of October, A. D. 1893, together with costs of this proceeding, said execution to issue on said decree as at law.*

From this an appeal was noted to the court of appeals, and the case is now here upon this record.

ARGUMENT.

At the hearing of this cause the counsel for the respondent, Dennis McCarthy, abandoned their contention set up in their petition, and took the ground that the decree was a decree that was non-executionable, being, as they contended, uncertain in its terms; but as the answer sets up certain

facts as a defense to the petition, it is necessary that we should briefly consider the defense therein set up.

In the first place, the petition itself was fully warranted by the law and was in the nature of a petition for an equitable *scire facias*, which is the means of reviving a decree that has become dormant by lapse of time. Mr. Alexander, in his work on Chancery Practice, says that where the decree is non-executionable, the person entitled to have execution issued on it may file either a bill of revivor or have issued a subpoena *scire facias*. In this case the court below treated the rule to show cause issued on the petition filed as an equitable *scire facias*, and the respondent McCarthy having fully answered the petition and the rule, the court had full jurisdiction both of the subject-matter and the parties. The court below then, as stated before, stated that the petition filed was in the nature of a petition for the subpoena *scire facias*, and that the rule was issued for the respondent to show cause; and that, the respondent not having shown any sufficient cause why execution should not issue on the decree of May 27, 1895, execution was thereupon awarded. The first contention set up by the appellant is that the court had no jurisdiction to pass the decree. It cannot be doubted, nor has it ever been questioned, that an equity court has jurisdiction in a mechanic's lien case, and, having jurisdiction of the lien, it has full jurisdiction to award a personal decree. There was no contention in the original proceedings that there should be any jury trial, or that the issues involved in the original proceedings should be settled by the jury. The defendant submitted to the jurisdiction of the court, submitted to the findings of the court and the report of the auditor, and nothing at that time was said about a right to a jury trial.

While there may be cases where a court of equity would send issues to a court of law to be tried by a jury, and even while there may be cases where a court of equity must send said issues, the case here presented is not one, nor was, as

stated before, any attempt made by the defendant to have any issues framed. The jurisdiction of the court in a case of this kind is well settled by the decision of the Supreme Court of the United States in the case of *Davis vs. Alvord*, 94 U. S., 545.

The answer further set up two other defenses—one that McCarthy was *non compos mentis* at the time that he made the contract on which the lien was claimed, which was the basis of the equity suit, and the other, that during the pendency and at the time of the final decree in the equity suit he was *non compos mentis*. In answer to the first contention it is only necessary to say that the decree itself determined all questions as to the validity of the contract, and that by the decree every defense that McCarthy might have had to the original suit was settled and determined, and no question can be raised in regard to it on this proceeding to revive the decree or award execution on it. It is well settled that the only defenses to a *scire facias*, or in this case a subpoena *scire facias*, are matters of discharge, or that there is no such record in existence, or that there was an absolute want of jurisdiction in the court which rendered the judgment or decree.

Dickson vs. Wilkinson, 3 How., 57.

Loeber vs. Moore, 20 D. C., 1.

In this case, as far as the insanity of the defendant is set up as a defense, no question of jurisdiction is raised. Every matter affecting the status or ability of McCarthy to make the contract, and every matter in defense of the original suit was foreclosed by the decree.

But the appellant contends that not only was he insane at the time of making the contract, but he was *non compos mentis* during the entire pendency of the suit and for some time after the rendition of the decree; that he was utterly incapable of employing counsel in his own behalf, and that he was legally incompetent to have counsel to appear for him, and that he had no knowledge of the

nature or import of the suit. The record shows that he filed his answer, which was sworn to by him before the clerk of the court (Record, p. 6), and that his answer was signed by counsel and was a full answer to the matters contained in the bill. The record here before the court does not disclose the fact that he testified in his own behalf in the original suit and before the auditor. The record in the court below does show this fact, and that both at the taking of the testimony in the original suit and before the auditor he was represented by counsel, and this record here before the court shows that his counsel agreed to the ratification of the auditor's report; but, however that may be, the law is well settled that a decree against a lunatic is neither void nor voidable.

Wood vs. Bayard, 63 Pa. St., 320.

Stiggers vs. Brandt, 50 Md., 214.

Woods vs. Brown, 93 Ind., 164.

Steinburg vs. Schoolcraft, 2 Barb., 153.

Freeman on Judgments, sec. 152.

It was, however, contended in the court below that, admitting that the answer did not set up a sufficient reason why execution should not issue, the decree itself was so framed that it was not a final judgment on which execution could issue. The answer to this is twofold: First, that the record shows that the decree is certain, as in the decree ratifying the auditor's report, which was a part of the record of the court below, it appears that the trust was not paid, and therefore on the record the petitioner had a right to receive the full amount decreed to him. This fully answers the contention of the appellant; but the decree, as rendered, was entered in conformity with the statute relating to mechanics' liens in the District of Columbia. In the act of 1884, section 5 (Abert's Compilation of the laws of the District of Columbia, p. 367), it is provided, among other things, that the proceedings to enforce the liens granted by

the act shall be by bill in equity, and that all persons interested in the premises, as far as known, shall be made parties complainant and defendant, and that "if judgment be rendered for the complainant, the court shall decree the sale of said land and premises and shall declare a proper distribution of the fund arising from such sale; and if upon sale the proceeds be insufficient to pay *all liens under this act, they shall stand as a judgment against the party who incurred the debt, if he be made or become a party to the suit, but not otherwise; and said judgment shall bear interest and have the same force and effect and be enforced in the same manner as in cases of judgment at law.*" It might be said that it was not even necessary in this case for the decree to have awarded execution, because the act does say that if upon sale the proceeds be insufficient to pay all liens, they (meaning the liens) shall stand as a judgment against the party who incurred the debt. In this case the party who incurred the debt was McCarthy; the liens were, by the decree, adjudged against him, and they stood as a judgment, bearing interest, and having the same force and effect and enforced in the same manner as in cases of judgments at law. So that the lien standing as a judgment, when unpaid by the sale, the petitioner had a right to take these proceedings without even having a decree for the balance due after the sale.

But, besides the wording of the statute, it is well settled by the authorities that a judgment in a case of this kind, which authorized an execution for a deficiency after sale, is sufficient to authorize issuance of execution against the owners of the property for the whole amount due on the lien.

Decker vs. O'Brien, 1 Appellate Div. Rep. N. Y., p. 81.
Baptist Church vs. Andrews, 87 Ill., 172.

In the case of Decker vs. O'Brien, above cited, the judgment was like the judgment in this case. In that case the court gave judgment for the whole amount adjudged to be due, qualifying the judgment by making the deductions,

if any, that might arise by reason of the sale of the premises. Speaking of the judgment, the court say :

“Concerning the form of the judgment to which defendant states an objection, it is true that it directs that the plaintiff recover of the defendant the whole amount adjudged to be due, but it also provides for the sale of the premises, and that if there be any deficiency remaining on the sale, that amount thereof be specified in the report of referee, and that the plaintiff recover of the defendant the amount of the deficiency so remaining and have execution therefor. There is nothing in this judgment from which it could be inferred that execution was to be issued against the property of the defendant for the whole amount of the lien. The true interpretation is that the premises are first to be resorted to, and that plaintiff have execution against the property for deficiency in case the full amount was not realized from a sale of the premises.”

It is therefore insisted that the decree in this case is a proper and sufficient decree and the one that should be given under our statute, and that the decree being in proper form and the respondent not having set up any reason why execution should not be issued on it, the court below was correct in awarding execution by its decree, and that its judgment should be affirmed.

WILTON J. LAMBERT,
D. W. BAKER,
Solicitors for Appellee.